

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25013
Docket Number SG-25041

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

On behalf of M. Y. Adams, who was disqualified from service by Dr. C. A. Mead, on September 15, 1981, for return to service with pay for all time lost until returned to service (he returned to service prior to July 26, 1982)." (Carrier file: 15-55(81-1017) 6)

OPINION OF BOARD: The Claimant, who is employed by the Carrier as a Signal Maintainer suffered a heart attack on May 2, 1981 and was hospitalized. On November 30, 1981, Chief Medical Officer Mead advised the Claimant of his "medical disqualification for further service based on coronary artery disease, myocardial infarction." The Claimant was returned to service in July, 1982.

Dr. Herren, the Claimant's physician, advised the Carrier in September, 1981 that "except for no climbing", it was his opinion that the Claimant was qualified to safely return to his regular assignment. On September 15, 1981, Dr. Mead notified the Claimant that in addition to the restriction against climbing it was his recommendation that he not be permitted to work alone, carry heavy objects or drive a Company vehicle. Furthermore, Dr. Mead added that upon advice from the Claimant's "employing officer *** there is no available position with those restrictions". Accordingly, he was "unable to approve his return to service." On October 29, 1981 Dr. Herren wrote to Dr. Mead and informed him that he and the Claimant's cardiologist believed that "the only limitations need to be fairly strenuous physical activities" and they did not fully understand the limitations of "working alone and driving an automobile, etc." Dr. Herren also indicated that he and the cardiologist "strongly feel" that the Claimant "should be returned to work, if at all possible, especially" because of the Claimant's "relatively young age".

The Organization contends that inasmuch as Dr. Herren released the Claimant to return to his regular assignment on September 14, 1981, and since there has been no medical examination of the Claimant by the Chief Medical Officer, the Claimant should be paid for all time lost, beginning September 14, 1981.

It is well established in the railroad industry that the Carrier has the unilateral right to establish and enforce medical standards for its employees. By its refusal to return the Claimant to service between September 14, 1981 and July 1982, the Carrier did not apply its medical standards or act in an arbitrary, capricious, unreasonable or discriminatory manner. There is nothing in the Agreement which requires the Carrier to examine the Claimant

before withholding him from service. The Chief Medical Officer not only considered the medical data furnished by the Claimant's personal physicians, but he also took into account the physical requirements of a Signal Maintainer's position which included climbing telephone poles, working in remote locations and alone, in many instances. The Chief Medical Officer is obligated to protect the interest of the public, the Carrier, other employees and the Claimant himself, by not permitting him to return to duty until he was physically able to perform the requirements of the job. See Third Division Award No. 14173. When he no longer was required to climb, the Claimant was returned to duty. Based upon the record, the Board concludes that the Carrier prudently and reasonably withheld the Claimant from service.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

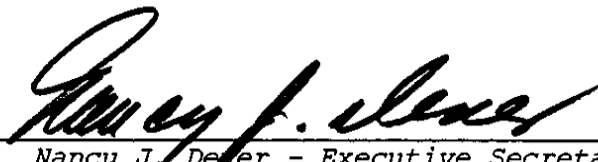
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

